



MACPHERSON LESLIE
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LAWYERS



OFF-SITE LEVIES

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- Off-Site Levies may be used only to pay for all or part of the capital cost of **any or all** of the following:
 - New or expanded facilities for the storage, transmission, treatment or supplying of **water**
 - New or expanded facilities for the treatment, movement or disposal of **sanitary sewage**
 - New or expanded **storm sewer** drainage facilities
 - New or expanded **roads** required for or impacted by a subdivision or development
 - **Land** required for or in connection with any of these facilities

- ***Principles and Criteria for Off-Site Levies Regulation AR 48/2004***
 - **Section 3 requires:**
 - Municipality is to retain the flexibility to negotiate the levy in good faith and in a manner that recognizes the unique or special circumstances of the municipality
 - There is to be full and open disclosure of all levy costs and payments
 - There is a shared responsibility between the municipality and developers for addressing and defining existing and future infrastructure requirements

- All beneficiaries of development are to be given the opportunity to participate in the cost of providing and installing infrastructure in the municipality on an equitable basis related to the degree of benefit
- Where necessary and practicable, the municipality is to coordinate infrastructure provision and services with neighbouring municipalities
- Methodology for determining the levy is to be consistent across the municipality
- Method of calculation is to be clear

- Information used to calculate the levy is to be kept current

- Calculation of the levy is to include:
 - Description of the specific infrastructure facilities
 - Description of the benefitting areas
 - Supporting technical data and analysis
 - Estimated costs and mechanisms to address cost increases over time

- Calculation of the levy is to be determined in consultation with affected landowners and developers
- Levy is subject to annual reporting requirements

UDI v. Leduc (City) 2006 ABQB

- Municipality must be able to demonstrate that cost allocation to new development is based on sound analysis which apportions infrastructure costs between new and existing development on reasoned and fair basis.

Keyland Development Corp. v. Cochrane (Town) **2007 ABQB**

- Municipality must demonstrate how the levy amount was calculated and must clearly articulate how both existing and new development impacts and benefits from infrastructure

Prairie Communities Development Corp. v. Okotoks (Town) 2011 ABCA

- Municipality must address the “benefit” of new or expanded infrastructure to both existing and new development in cost allocation
- Off-site levy bylaw must reference the cost allocation between existing and new development

- Municipality must be able to demonstrate that the cost allocation is reasonable
- Municipality cannot rely upon its natural person powers to impose an agreement on developers to collect levies for infrastructure not contemplated within Part 17 of the ***Municipal Government Act***

Kiewit Energy Canada Corp. v. Edmonton (SDAB) **2013 ABCA**

- City imposed Sanitary Expansion Assessment in 2005
- City was precluded from imposing Arterial Roadway Assessment in 2011 by virtue of Section 648(2) of the MGA
- Cannot avoid Section 648(2) restrictions by calling an off-site levy a “development charge”